

MINUTES

**MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON ENERGY AND TELECOMMUNICATIONS

Call to Order: By **CHAIRMAN ROYAL JOHNSON**, on February 18, 2003
at 7:00 A.M., in Room 317-C Capitol.

ROLL CALL

Members Present:

Sen. Royal Johnson, Chairman (R)
Sen. Bea McCarthy (D)
Sen. Walter McNutt (R)
Sen. Gary L. Perry (R)
Sen. Don Ryan (D)
Sen. Emily Stonington (D)
Sen. Bob Story Jr. (R)
Sen. Mike Taylor (R)
Sen. Ken Toole (D)

Members Excused: Sen. Corey Stapleton, Vice Chairman (R)

Members Absent: None.

Staff Present: Todd Everts, Legislative Services Division
Marion Mood, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted:
Executive Action: SB 308; SB 277; SB 234; SB 67

EXECUTIVE ACTION ON SB 308

CHAIRMAN JOHNSON, SD 5, BILLINGS, advised the committee of proposed amendments for SB 308 which, if passed, would make SB 277 unnecessary.

Motion: **SEN. TAYLOR** moved that **SB 308 DO PASS**.

Discussion:

SEN. MIKE TAYLOR, SD 37, PROCTOR, stated SB 308 was a telemarketing fraud prevention bill designed to lessen the vulnerability created by the exemptions in SB 62 and SB 327. He briefly went over the provisions of the bill, namely the bonding requirement; businesses having to have a registered agent or tax ID; the shortening of the calling hours; disclosure of the dollar amount which goes to the charity in a fund raising effort; disclosure and registration of candidate name or party in campaign fund raising efforts; and increase of penalties for telemarketing fraud from \$500 to \$1,500.

Motion: **SEN. TAYLOR** moved that **AMENDMENT SB030803.ATE, EXHIBIT (ens36a01)**, BE ADOPTED.

Discussion:

SEN. TAYLOR briefly went over various items in the amendment, such as the striking of the script requirement for reasons of constitutionality, and the extension for the prior business relationship from 180 days to 18 months in conformity with federal standards. **SEN. DON RYAN, SD 22, GREAT FALLS**, asked if the in-state requirement could stay at 180 days, and the sponsor replied he was told deviating from the federal rules might create a problem. **CHAIRMAN JOHNSON** referred the question to **Todd Everts, Legislative Services Division**, who stated if the federal government did not prohibit the 180 days, allowing us to be more strict with intra-state issues, then he saw no problem; he cautioned, though, he was not all that familiar with the federal regulations. **SEN. RYAN** did not think federal rules pre-empted states from setting their own rules. **SEN. TAYLOR** went on to explain item 8 which put the phone companies on a level playing field. **Mr. Everts** advised the committee items 10 and 11 amended SB 277 into the bill and explained both **SEN. CURTISS** and **SEN. TAYLOR** had designated the use of automatic dialing announcing devices as an abusive act as defined under current Montana law; both sponsors had also created exceptions for certain entities using those devices such as schools districts getting messages to parents or students, established business relationships making contact with their customers, and government entities using these devices in the interest of public safety. **SEN. KEN TOOLE, SD 27, HELENA**, wondered if nonprofit organizations could still use auto-dialers. **Mr. Everts** replied the bill was very specific about these devices being used in solicitations; he did not see a problem with organizations using them to promote an event, for instance. **CHAIRMAN JOHNSON** suggested to discuss and vote on

items 1 through 6 in tandem, and separate out item #7 which gained the members' approval.

Substitute Motion: SEN. JOHNSON moved that ALL AMENDMENT ITEMS EXCEPT #7 BE ADOPTED.

Discussion:

SEN. BOB STORY, SD 12, PARK CITY, asked if there was a difference between automatic dialing devices and predictive dialers which were both mentioned in SB 277 but not in this amendment. Mr. Everts pointed to subsection (e) on page 8 which includes both devices.

Vote: Motion carried unanimously.

SEN. RYAN repeated his request to tighten up Montana's law by leaving it at 180 days, saying item #7 in the amendment was unnecessary. SEN. TAYLOR professed he had no problem with taking out #7. SEN. McCARTHY asked to refer back to lines 26 through 28 on page 4 of the bill, saying some university representatives had approached her because they were concerned if that language were left in, the sports booster clubs and alumni associations might run into problems. Mr. Everts explained this section listed all the exemptions to the registration and bonding requirements, and the amendment specified the entities which would be exempt, namely those who have public members and whose membership requires payment of dues; if this did not cover the university clubs and associations, they would have to register and bond as well. SEN. McCARTHY asked if they did have to bond, or if the foundation was considered "educational" as defined in the bill. SEN. STONINGTON advised according to lines 24 through 28, the alumni associations and even museums would have to bond and register, and she declared she had a problem with that because she viewed them as charitable organizations and welcomed their calls. SEN. McCARTHY wondered if museums such as the Historical Society were exempt, and Mr. Everts said it would not be exempt. SEN. TAYLOR commented this provision was requested by the Department of Administration because of the many groups which were abusing the system; he had thought up until now university associations would be exempted from bonding. SEN. TOOLE agreed with SEN. STONINGTON, saying these membership based groups should be exempt and suggested to change the wording to exclude them from the bonding requirement. SEN. McCARTHY repeated she was uncomfortable passing this legislation if it meant these groups had to go through the bonding and registration progress.

Motion/Vote: SEN. MCCARTHY moved to STRIKE LINES 26 - 28 ON PAGE 4 of Amendment SB030803.ate. Motion carried unanimously.

{Tape: 1; Side: B}

CHAIRMAN JOHNSON invited follow-up discussion on SB 308 as amended. SEN. RYAN was curious as to whether there was any history of outlawing automatic dialing devices in other states, or whether Montana was charting new territory. SEN. TAYLOR felt there was, having conferred with the Department of Administration on this issue; he mentioned "predictive dialing" was another prohibited calling technique. SEN. TOOLE reiterated his organization had bought and was using one of these devices, and advised the manual listed restrictions and some states' statutes with regard to their use; this made him believe they were indeed regulated. SEN. MCCARTHY wondered what "predictive" dialing was, and SEN. TOOLE explained the automatic dialer made the call, and as soon as it was answered, it was transferred to a real person.

Vote: Motion that SB 308 DO PASS AS AMENDED carried unanimously, with SEN. STAPLETON voting by proxy.

EXECUTIVE ACTION ON SB 277

Motion/Vote: SEN. STORY moved that SB 277 BE INDEFINITELY POSTPONED. Motion carried unanimously.

EXECUTIVE ACTION ON SB 234

Upon the chairman's request, Mr. Everts gave a brief overview of the bill, saying it clarifies the PSC's authority to approve, disapprove, modify or condition the acquisition or transfer of a public utility or a public utility's property.

Motion: SEN. PERRY moved that SB 234 BE INDEFINITELY POSTPONED.

Discussion:

SEN. TOOLE referred to the discussion during the hearing where it was stated acquisition adjustments were already in place and this bill was not needed. He felt, however, after watching the recent sale of large utility properties where the commission's scope of authority was questioned, it was very necessary they were given clear authority. CHAIRMAN JOHNSON asked SEN. GARY PERRY, SD 16, MANHATTAN, to consider withdrawing his motion so that the sponsor's amendments could be discussed. After SEN. PERRY

agreed, **Amendment SB023401.ate, EXHIBIT(ens36a02)**, was handed out. **Mr. Everts** explained this amendment clarified "public utility" to be a *regulated* public utility, regulated by the PSC. **SEN. STORY** wondered if there were any regulated municipal utilities and pointed to the Butte Water Company which used to be a private corporation. **Mr. Everts** advised this was codified under 69-3; the definition of a public utility in this chapter was fairly broad but every utility company in it was regulated by the PSC with the exception of the cooperatives. **CHAIRMAN JOHNSON** asked for input from the audience, and **John Alke** came forward and stated municipal water utilities were not regulated by the PSC.

Motion/Vote: **SEN. TOOLE** moved that **AMENDMENT SB023401.ATE BE ADOPTED**. Motion carried unanimously.

Motion/Vote: **SEN. STORY** moved that **AMENDMENT SB023402.ATE, EXHIBIT(ens36a03)**, **BE ADOPTED**. Motion failed 3-6 with **JOHNSON, STORY, and TOOLE** voting aye.

Motion: **SEN. JOHNSON** moved that **SB 234 DO PASS AS AMENDED**.

Discussion:

SEN. STONINGTON stated one of the more disturbing claims made by opponents was if Montana/Dakota Utility, whose Montana operations represented only 3% of the total, was to sell, buy, or merge, the Montana PSC would have authority over the transaction. It bothered her enough to ask **Mr. Everts** for his legal opinion on the issue. **Mr. Everts** advised the PSC was confining their authority to whether a transaction impacted rates or service within the state; it was his interpretation the PSC could reach across the border if a transaction affected rates and service for Montana's citizens. **SEN. STONINGTON** commented the issue was whether this statute gave authority to the PSC over a large business with a mere fraction of holdings in Montana. **Mr. Everts** replied he was unable to address this issue without doing extensive research. **SEN. STORY**, stating he would not support this bill, pointed to Subsection 2 (a) through (c) and stated the criteria which the PSC can apply to approve, disapprove or modify a sale were vague and failed to explain "adverse effect on the public interest". He also disagreed with (c) because most often a sale or other transaction results in higher rates or prices. Lastly, he referred to the sale of PacifiCorp to the Fathead Co-operative, i.e., the sale of a regulated to an unregulated utility and pointed out the PSC could have denied that sale under this bill. He felt SB 234 gave the commission too much authority to meddle in the affairs of businesses. **SEN. PERRY** agreed with **SEN. STORY**, saying regulating businesses was not in the interest

of the consumer; we, as a government, might as well take over every organization and run it. **SEN. TOOLE** pointed out the businesses in question were not corner gas stations but monopolies which had operated in a regulated environment; they would not exist without regulation, and there was a huge public interest at stake when these monopolies transfer properties. He did not think the sale outside the state's jurisdiction was a big issue since these utilities were engaged in selling service throughout the Northwest and claimed there was no way to guard public interest if we do not acknowledge the PSC should have a say in these transactions. **SEN. McNUTT, SD 50**, disavowed support for the bill saying it was too broad; he did not think the PSC had the ability or expertise to modify or condition such a transaction to where it would be in the public's best interest. After having visited with members of the PSC and other involved parties, he felt they could not agree whether this should be determined by the Legislature, with the PSC holding they already have this authority. He felt this bill was unnecessary, not workable, and gave the PSC far too much latitude. **CHAIRMAN JOHNSON** stated his support for SB 234 because of the message the title conveyed "This is an Act *clarifying* the Public Service Commission's authority..."; he recalled both **Commissioners Rowe and Schneider** testifying as proponents because they wanted their position clarified, and they were backed by **Bob Nelson, Consumer Counsel**, and **John Bushnell, Northwest Power Planning Council**. He asked the committee to consider passing the bill so it could be discussed further on the floor. **SEN. PERRY** reminded the committee this bill was heard on January 28, and on the 30th, the same members of the PSC testified they had neither the staff, nor the time or the funds to pre-approve contracts by the default supplier; yet now, disregarding the title, lines 10 and 11 clearly mandate pre-approval, requiring those same PSC resources. **SEN. TOOLE** commented transfers would be very infrequent whereas pre-approval of ongoing contracts and portfolios of the default supplier would happen more frequently; with regard to the work load issue, the demands on the PSC would therefore not be that great because this was dealing with much more exceptional circumstances. When **SEN. RYAN** expressed concern with the provision on line 12, authorizing the PSC to "modify" a transaction, **CHAIRMAN JOHNSON** asked if he would be more comfortable if this language was removed, and **SEN. RYAN** stated he would.

Substitute Motion: **SEN. RYAN** moved TO STRIKE THE WORD "MODIFY" .

Discussion:

SEN. McNUTT felt even with the removal of the term "modify" he could not support the bill; it still authorized the PSC to

"condition" a transaction and inadequately addressed **SEN. STORY's** concerns as stated above.

Vote: Substitute Motion TO STRIKE "MODIFY" carried 7-2 with **MCNUTT** and **STORY** voting no.

SEN. STONINGTON stated, for the record, there was a compelling state interest in the transactions of public utilities but this bill allowed for too broad an authority; she was also concerned with the sale of the dams and the disintegration of the control over utility rates. **CHAIRMAN JOHNSON** asked how she would formulate this "compelling interest" and amend it into the bill.

SEN. STONINGTON replied the answer to that was as elusive as finding an answer to whether the PSC should have a say over 3% of a business, and she just could not support the bill.

Substitute Motion/Vote: **SEN. PERRY** made a substitute motion that **SB 224 BE INDEFINITELY POSTPONED**. Substitute motion carried 8-2 with **JOHNSON** and **TOOLE** voting no; **SEN. STAPLETON** voted by proxy.

{Tape: 2; Side: A}

EXECUTIVE ACTION ON SB 67

Note: **SEN. MCCARTHY** and **SEN. PERRY** were excused for the remaining time of the meeting because of other obligations.

SEN. STONINGTON asked that the committee discuss what they thought the appropriate future of the Transition Advisory Committee should be, and then consider adding amendments. As far as she was concerned, it could either be abolished or its duties assigned to the Environmental Quality Council (EQC), or a new interim committee could be created. She mentioned **HB 509** contained a provision to abolish the TAC but cautioned if the committee went along with that, it would give up the opportunity to have a say in future energy issues; the decision depended upon whether the committee thought there were enough energy issues still out there to warrant the TAC's continuation. **CHAIRMAN JOHNSON** agreed with her, saying the TAC should stay in place.

Motion: **SEN. STONINGTON** moved that **SB 277 DO PASS**.

Discussion:

SEN. STORY felt the TAC had served its purpose during the transition, and its duties should be turned over to the EQC.

SEN. MCNUTT agreed with him, saying the EQC had been looking at

energy issues all along. **SEN. TOOLE** also agreed with what was being said and added a lot of time and effort had gone into the TAC, both from legislators and the various interest groups; he suggested finding a different forum because people could not afford to participate in all of the meetings. **SEN. McNUTT** stated the industry spent a lot of money because their members' compensation differed from that of the legislators; they sent a lot of people in who were very active on this committee. **SEN. TOOLE** pointed out he was mainly concerned with the citizen groups who had to decide which of the meetings to attend. **SEN. STONINGTON** stated that **Jeff Martin** who was staffing the TAC pointed out it was illegal for the legislators to use industry money to fund the committee which resulted in the attempt to restructure the committee. **CHAIRMAN JOHNSON** advised funding was established if the TAC continued.

SEN. STONINGTON withdrew her original motion and **MOVED TO INDEFINITELY POSTPONE SB 67.**

CHAIRMAN JOHNSON cautioned there still was a need for continued monitoring; the TAC should be reorganized but not abolished.

Vote: Motion that SB 67 BE INDEFINITELY POSTPONED carried 7-2 with JOHNSON and RYAN voting no.

ADJOURNMENT

Adjournment: 8:15 A.M.

SEN. ROYAL JOHNSON, Chairman

MARION MOOD, Secretary

RJ/MM

EXHIBIT (ens36aad)